

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Alexandria Division

UNITED STATES OF AMERICA,	:	
	:	
v.	:	Criminal Case No. 1:18-CR-457 (AJT)
	:	
BIJAN RAFIEKIAN, et al.	:	

**MOTION FOR JULY 8, 2019 HEARING ON NONDISCLOSURE ORDER AND
GOVERNMENT’S NOTICE OF CORRECTION TO THE RECORD**

Mr. Rafiekian respectfully moves the Court to reset the next Docket Call in this case—currently scheduled for July 9, 2019 at 10:00 A.M.—for July 8, 2019, at a time convenient to the Court. The government does not object to a July 8, 2019 Docket Call.

Trial in this case will begin on Monday, July 15, 2019.

On July 3, 2019, the government filed a document styled “Notice of Correction to the Record” (the “Notice”) in which the government seeks to reverse its prior and longstanding representations to the Court and the Defendant with regard to the role of Michael Flynn as a co-conspirator in the conspiracy charged in the Indictment of this case. At the same time, the government informed the Court and the Defendant that (a) Flynn will not testify in the government’s case-in-chief (b) the government will now seek admission of Flynn’s statements into evidence as out-of-court statements of a co-conspirator pursuant to Federal Rule of Evidence 801(d)(2)(e). The Court then granted, on the government’s motion, an Order placing the Notice and its contents under seal.

On the eve of trial, the gravity of this reversal of position by the government with regard to Flynn – the witness whose allegations gave rise to this criminal case and who was repeatedly identified by the government as not a co-conspirator – cannot be overstated. With only a few days remaining before jury selection, the loss of an additional day before being heard by the

Court on this matter will only increase the obstacles lately created by the government on the ability of Mr. Rafiekian's lawyers to prepare and present an effective trial defense.

Mr. Rafiekian will shortly submit a memorandum to the Court that will address in detail (a) additional facts relating to the recent disclosures by the government, (b) the legal effect of these disclosures on this case and the trial and (c) the reasons that the Notice and its content should not be maintained under seal.

Further, Mr. Rafiekian's counsel has a long scheduled commitment to be in Boston on behalf of another client in connection with another criminal case on Tuesday, July 9, 2019.

For these reasons, and subject in all respects to the demands of the Court's calendar, Mr. Rafiekian respectfully requests that the hearing in this case, that is currently scheduled for Tuesday, July 9, 2019, be reset for any time on Monday, July 8, 2019.

Dated: July 5, 2019

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that, on the 5th day of July 2019, true and genuine copies of Defendant Rafiekian's Motion for July 8, 2019 Hearing on Nondisclosure Order and Government's Notice of Correction to the Record were sent via email to the following:

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